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***Attorneys for Defendants Plaintiffs  
 BrandTotal, Ltd. and Unimania, Inc.***

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO/OAKLAND DIVISION**

FACEBOOK, INC., a Delaware  
 corporation,

*Plaintiff,*

v.

BRANDTOTAL, LTD., an Israeli  
 corporation, and  
 UNIMANIA, INC., a Delaware  
 corporation,

*Defendants.*

Case No.: 3:20-CV-07182-JCS

**DECLARATION OF RUDOLPH A.  
 TELSCHER, JR. IN SUPPORT OF *EX*  
*PORTE* MOTION OF DEFENDANTS  
 BRANDTOTAL, LTD. AND UNIMANIA,  
 INC. FOR TEMPORARY RESTRAINING  
 ORDER**

1 I, Rudolph A. Telscher, Jr., state as follows:

2 1. I am an attorney duly licensed to practice law in the State of Missouri. I am a  
3 partner with the law firm of Husch Blackwell LLP, counsel for Defendants BrandTotal Ltd. and  
4 Unimania, Inc. (collectively, "BrandTotal"), admitted pro hac vice in the above-styled litigation.  
5 My testimony in this declaration is based on personal knowledge, information, and belief regarding  
6 this litigation, and if called as a witness, I could and would competently testify thereto.

7 2. On October 1, 2020 BrandTotal was sued in the Superior Court of California, San  
8 Mateo county, by Plaintiff Facebook, Inc. ("Facebook") under case number 20-CIV-04526. The  
9 complaint alleged only breach of contract as to Facebook's Terms of Service and unjust  
10 enrichment. Attached hereto as Exhibit F is a true and correct copy of the complaint.

11 3. I contacted Facebook's counsel on Monday, October 5<sup>th</sup> to set up a call to discuss  
12 the case, which was scheduled for Thursday, October 8<sup>th</sup>.

13 4. On the teleconference between counsel for the parties on October 8<sup>th</sup>, I informed  
14 Facebook's counsel of BrandTotal's intent to move for temporary injunctive relief, in addition to  
15 the discussion of the lawsuit and potential for a resolution.

16 5. Facebook's counsel requested we delay bringing any motion for temporary  
17 restraining order until after the parties could hold a settlement meeting, which Facebook indicated  
18 it needed to occur on Wednesday, October 14<sup>th</sup>.

19 6. The morning of October 14<sup>th</sup>, we provided official notice, as required by Rule  
20 3.1204 of the California Rules of Court, of BrandTotal's intent to move *ex parte* for application for  
21 a temporary restraining order, to be heard no earlier than Friday, as agreed by the parties.

22 7. During the settlement conference held between the parties on Wednesday, October  
23 14<sup>th</sup>, Facebook announced they lacked any settlement authority to either moot BrandTotal's  
24 imminent TRO or otherwise resolve the case.

25 8. The very same afternoon, Facebook unilaterally dismissed the Superior Court action  
26 and re-filed the instant case in this Court that evening, adding several additional causes of action.

27 9. Attached hereto as Exhibit G is a true and correct copy of Facebook's Terms and  
28

1 Conditions, last revised October 1, 2020, retrieved from <https://www.facebook.com/terms.php> on  
2 October 14, 2020.

3 10. Attached hereto as Exhibit H is a true and correct copy of Facebook's Data Policy,  
4 last revised August 21, 2020, retrieved from <https://www.facebook.com/privacy/explanation> on  
5 October 14, 2020.

6 11. Attached hereto as Exhibit I is a true and correct copy of an archived version of  
7 Facebook's Terms and Conditions as they existed in 2017, found at  
8 <https://web.archive.org/web/20171107223329/https://www.facebook.com/terms>.

9 12. Attached hereto as Exhibit J is a true and correct copy of an article from The Wall  
10 Street Journal titled "Facebook Fined Over Cambridge Analytica Case, but U.K. Wishes for  
11 Bigger Penalty," dated October 25, 2018, and found at [https://www.wsj.com/articles/regulator-](https://www.wsj.com/articles/regulator-wishes-it-could-fine-facebook-more-in-cambridge-analytica-case-1540467235)  
12 [wishes-it-could-fine-facebook-more-in-cambridge-analytica-case-1540467235](https://www.wsj.com/articles/regulator-wishes-it-could-fine-facebook-more-in-cambridge-analytica-case-1540467235).

13 13. Attached hereto as Exhibit K is a true and correct copy of the Congressional Report  
14 released in October 2020 by the Subcommittee on Antitrust, Commercial and Administrative Law  
15 of the Committee on the Judiciary, "Investigation of Competition in Digital Markets," Majority  
16 Staff Report and Recommendation.

17 14. Attached hereto as Exhibit L is a true and correct copy of the California Senate  
18 Floor Analyses, June 28, 2018, found at [https://leginfo.ca.gov/faces/](https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB375)  
19 [billAnalysisClient.xhtml?bill\\_id=201720180AB375](https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB375).

20 15. Attached hereto as Exhibit M is a true and correct copy of the April 15, 2019 order  
21 granting an injunction against Facebook issued by the Federal Court of Australia, Victoria District,  
22 in the matter of *Dialogue Consulting Pty Ltd. v. Instagram, Inc. et al.*, Case No. VID 369/2019  
23 ("Australian matter").

24 16. Attached hereto as Exhibit N is a true and correct copy of the May 3, 2019 order  
25 joining Instagram, LLC in the Australian matter referenced above.

26 17. Attached hereto as Exhibit O is a true and correct copy of the April 27, 2020  
27 Federal Trade Commission Order, *In the Matter of Facebook, Inc.*, Docket No. C-4365.  
28

\* \* \*

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 16th day of October 2020 in St. Louis, Missouri.

/s/ Rudolph A. Telscher, Jr.  
Rudolph A. Telscher, Jr.